

Introduced by Senator Cogdill

February 19, 2010

An act to add Section 2080.3 to, and to add and repeal Sections 2080.2 and 2080.5 of, the Fish and Game Code, relating to endangered species.

LEGISLATIVE COUNSEL'S DIGEST

SB 1349, as introduced, Cogdill. Endangered species: experimental populations.

The California Endangered Species Act (state act) prohibits the taking of an endangered or threatened species, except as specified. The Department of Fish and Game may authorize the take of listed species if the take is incidental to an otherwise lawful activity and the impacts are minimized and fully mitigated. Existing law provides that if any person obtains from the Secretary of the Interior or the Secretary of Commerce an incidental take statement or incidental take permit pursuant to the federal Endangered Species Act (federal act) that authorizes the taking of an endangered species or threatened species listed pursuant to the federal act and that is an endangered species, threatened species, or candidate species pursuant to the state act, no further authorization or approval is necessary under the state act for that person to take the endangered species, threatened species, or candidate species identified in, and in accordance with, the incidental take statement or incidental take permit, if that person notifies the Director of Fish and Game, as specified, and the director determines that the statement or permit is consistent with the state act.

This bill would establish provisions that parallel those federal incidental take provisions for a person who obtains a federal enhancement of survival permit. Those enhancement of survival permit provisions would be repealed if federal law alters the requirements for

issuing an enhancement of survival permit. The bill would also provide that the state act does not prohibit the take, or the incidental take, of any endangered, threatened, or candidate species, if the Secretary of the Interior or the Secretary of Commerce designates, as prescribed, an experimental population of an endangered or threatened species that is listed pursuant to certain provisions of the federal act and regulations adopted thereto, and the take, or incidental take, occurs in conformance with those provisions.

The bill, until January 1, 2020, would authorize the department to authorize the take of 3 experimental populations, as defined, of endangered species, threatened species, or candidate species listed pursuant to the state act in defined management zones.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2080.2 is added to the Fish and Game
- 2 Code, to read:
- 3 2080.2. (a) For purposes of this section, the term “experimental
- 4 population” means any population, including any eggs, propagules,
- 5 individuals, or offspring arising solely therefrom, authorized for
- 6 release under this section that meets the following requirements:
- 7 (1) The population is for some duration wholly separate
- 8 geographically from nonexperimental populations of the same
- 9 species. If there is for some duration geographic overlap of
- 10 experimental and nonexperimental populations, experimental status
- 11 shall be recognized only outside the areas of overlap, and a
- 12 specimen of an experimental population that overlaps
- 13 geographically with a natural population of the same species will
- 14 not be recognized as a member of an experimental population
- 15 while in the area of overlap.
- 16 (2) The duration of episodes of geographic separation are
- 17 reasonably predictable, including geographic separations created
- 18 by fixed migration patterns or natural or manmade barriers.
- 19 (3) The separation of populations does not occur solely as a
- 20 result of random and unpredictable events.
- 21 (b) The department may authorize the take of three experimental
- 22 populations of endangered species, threatened species, or candidate

1 species that are listed pursuant to this chapter in defined
2 management zones.

3 (c) This section shall remain in effect only until January 1, 2020,
4 and as of that date is repealed, unless a later enacted statute, that
5 is enacted before January 1, 2020, deletes or extends that date.

6 SEC. 2. Section 2080.3 is added to the Fish and Game Code,
7 to read:

8 2080.3. Nothing in this chapter prohibits the take, or the
9 incidental take, of any endangered, threatened, or candidate species
10 if the Secretary of the Interior or the Secretary of Commerce
11 designates an experimental population, pursuant to subparagraph
12 (A) of paragraph (2) of subdivision (j) of Section 1539 of Title 16
13 of the United States Code, of an endangered or threatened species
14 that is listed pursuant to Section 1533 of Title 16 of the United
15 States Code and adopts a regulation pursuant to Sections 17.81
16 and 17.82 of Title 50 of the Code of Federal Regulations that
17 contains prohibitions and exceptions to the prohibitions for the
18 designated experimental population, and the take, or incidental
19 take, occurs in conformance with that regulation.

20 SEC. 3. Section 2080.5 is added to the Fish and Game Code,
21 to read:

22 2080.5. (a) Notwithstanding any other provision of this chapter,
23 or Chapter 10 (commencing with Section 1900) or Chapter 11
24 (commencing with Section 1925) of Division 2, but subject to
25 subdivision (c), if any person obtains from the Secretary of the
26 Interior or the Secretary of Commerce an enhancement of survival
27 permit pursuant to subparagraph (A) of paragraph (1) of
28 subdivision (a) of Section 1539 of Title 16 of the United States
29 Code that authorizes the take of an endangered species, threatened
30 species, or candidate species that is listed pursuant to this chapter,
31 no further authorization or approval is necessary under this chapter
32 for that person to take that endangered species, threatened species,
33 or candidate species identified in, and in accordance with, the
34 enhancement of survival permit, if that person does both of the
35 following:

36 (1) Notifies the director in writing that the person has received
37 an enhancement of survival permit issued pursuant to the federal
38 Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.).

39 (2) Includes in the notice to the director a copy of the
40 enhancement of survival permit.

1 (b) Upon receipt of the notice specified in paragraph (1) of
2 subdivision (a), the director shall direct the publication of that
3 notice in the General Public Interest section of the California
4 Regulatory Notice Register.

5 (c) Within 30 days after the director has received the notice
6 described in paragraph (1) of subdivision (b) that an enhancement
7 of survival permit has been issued pursuant to the federal
8 Endangered Species Act of 1973, the director shall determine
9 whether the enhancement of survival permit is consistent with the
10 goals of this chapter. If the director determines within that 30-day
11 period, based upon substantial evidence, that the enhancement of
12 survival permit is not consistent with the goals of this chapter, then
13 the taking of that species may only be authorized pursuant to this
14 chapter.

15 (d) The department shall immediately publish the determination
16 pursuant to subdivision (b) in the General Public Interest section
17 of the California Regulatory Notice Register.

18 (e) Unless deleted or extended by a later enacted statute that is
19 chaptered before the date this section is repealed, this section shall
20 remain in effect only until, and is repealed on, the effective date
21 of an amendment to Section 1539 of Title 16 of the United States
22 Code that alters the requirements for issuing an enhancement of
23 survival permit, as applicable.